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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 TOM FRANKLIN,

12 Plaintiff,

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14 v.
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16 U.S. BANK NATIONAL
17 ASSOCIATION,

18 Defendant.
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CASE NO: 10-CV-1020 W (CAB)

ORDER:

(1) DENYING IN FORMA
PAUPERIS MOTION
(Doc. No. 2) and;

(2) DISMISSING LAWSUIT
(Doc. No. 1)

21 On May 12, 2010, Plaintiff Tom Franklin ("Plaintiff"), proceeding *pro se*,
22 commenced this action. (Doc. No. 1.) On the same day, Plaintiff filed a motion seeking
23 *in forma pauperis* ("IFP") status. (Doc. No. 2.) For the reasons outlined below, the Court
24 **DENIES** Plaintiff's IFP motion and **DISMISSES WITHOUT PREJUDICE** the
25 lawsuit.

26 The determination of indigency falls within the district court's discretion.
27 California Men's Colony v. Rowland, 939 F.2d 854, 858 (9th Cir. 1991), *reversed on*
28 *other grounds*, 506 U.S. 194 (1993) (holding that "Section 1915 typically requires the

1 reviewing court to exercise its sound discretion in determining whether the affiant has
 2 satisfied the statute's requirement of indigency."). It is well-settled that a party need
 3 not be completely destitute to proceed in forma pauperis. Adkins v. E.I. DuPont de
 4 Nemours & Co., 335 U.S. 331, 339-40 (1948). To satisfy the requirements of 28 U.S.C.
 5 § 1915(a), "an affidavit [of poverty] is sufficient which states that one cannot because
 6 of his poverty pay or give security for costs ... and still be able to provide himself and
 7 dependents with the necessities of life." Id. at 339. At the same time, however, "the
 8 same even-handed care must be employed to assure that federal funds are not
 9 squandered to underwrite, at public expense, ... the remonstrances of a suitor who is
 10 financially able, in whole or in material part, to pull his own oar." Temple v.
 11 Ellerthorpe, 586 F.Supp. 848, 850 (D.R.I. 1984).

12 District courts, therefore, tend to reject IFP applications where the applicant can
 13 pay the filing fee with acceptable sacrifice to other expenses. See, e.g., Stehouwer v.
 14 Hennessey, 851 F.Supp. 316, (N.D.Cal. 1994), *vacated in part on other grounds*, Olivares
 15 v. Marshall, 59 F.3d 109 (9th Cir. 1995) (finding that district court did not abuse
 16 discretion in requiring partial fee payment from prisoner with \$14.61 monthly salary and
 17 \$110 per month from family); Allen v. Kelly, 1995 WL 396860 at *2 (N.D. Cal. 1995)
 18 (Plaintiff initially permitted to proceed in forma pauperis, later required to pay \$120
 19 filing fee out of \$900 settlement proceeds); Ali v. Cuyler, 547 F.Supp. 129, 130 (E.D.
 20 Pa. 1982) (in forma pauperis application denied: "plaintiff possessed savings of \$450 and
 21 the magistrate correctly determined that this amount was more than sufficient to allow
 22 the plaintiff to pay the filing fee in this action."). Moreover, the facts as to the affiant's
 23 poverty must be stated "with some particularity, definiteness, and certainty." United
 24 States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981).

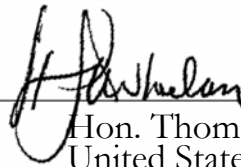
25 Having read and considered the papers submitted, the Court finds that based on the
 26 current record, Plaintiff has failed to meet 28 U.S.C. § 1915's requirements for IFP status.
 27 Specifically, the information provided by Plaintiff in support of his IFP motion lacks the
 28 "particularity, definiteness, and certainty" that is required by the Ninth Circuit. Id.

1 For example, Plaintiff has refused to provide answers to most of the questions on
2 the IFP application. (See *IFP Mot.* at ¶¶ 1, 2, 5, 8, 9, 10, 11.) Based on this lack of
3 information, Plaintiff's true economic situation is unascertainable.

4 Accordingly, the Court **DENIES** Plaintiff's application to proceed *in forma pauperis*
5 without prejudice, and **DISMISSES** the lawsuit. Plaintiff shall have until **June 11, 2010**
6 to reinstate this case by (1) paying the \$350 filing fee or (2) submitting an amended IFP
7 application. Plaintiff is advised that failure to meet either of these requirements may cause
8 the termination of his case without further leave to amend.

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10 **IT IS SO ORDERED.**

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12 DATED: May 17, 2010

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15 Hon. Thomas J. Whelan
16 United States District Judge
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